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BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

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ORIGINAL

In the Matter of Consideration of Regulations)
Regarding the Designation of Eligible)
Telecommunications Carriers)

2006-37-C

BRIEF OF HARGRAY WIRELESS, LLC

Hargray Wireless, LLC ("Hargray"), by its counsel, hereby submits its Brief in response to the Commission's Order dated March 27, 2007, in the above-captioned matter.¹

I. INTRODUCTION

In the Order, the Commission noted that an administrative proceeding is underway to consider new rules governing eligible telecommunications carrier ("ETC") designations and annual certifications. However, the Commission also expressed concern about "further delaying consideration of [pending] applications on their merits". Therefore, the Commission stated its belief that "it can and should move forward to consider ETC applications on a case-by-case basis" and invited parties to file briefs on the issue of whether the Commission should consider the recommended guidelines set forth in the FCC's March 17, 2005, *ETC Report and Order*² during the interim period while the Commission considers its own ETC rules.

For the reasons set forth below, Hargray believes the Commission should rely on the

¹ In re: Petition of the Office of Regulatory Staff for a Rule-Making Proceeding to Examine the Requirements and Standards to Be Used by the Commission When Evaluating Applications for Eligible Telecommunications Carrier (ETC) Status and When Making Annual Certification of ETC Compliance to the Federal Communications Commission, Order Addressing Pending Applications and Setting Forth Date for Filing Briefs, Order No. 2007-193 ("Order").

² *Federal-State Joint Board on Universal Service, Report and Order*, 20 FCC Rcd 6371 (2005) (*ETC Report and Order*)

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FCC's guidelines for purposes of evaluating currently pending ETC applications while permanent rules remain pending.

II. DISCUSSION

In the *ETC Report and Order*, the FCC encouraged states to require carriers “to meet the same conditions and to conduct the same public interest analysis outlined in this Report and Order.”³ Consistent with the FCC's guidance, Hargray has urged the Commission to adopt a set of rules that is largely based on the FCC's guidelines and applicable to both incumbents and competitors.⁴ Earlier this year, the Commission issued a notice of drafting that opened a set of proposed rules to public comment. In response, Hargray noted that the draft ETC rules are generally consistent with the FCC's guidelines and will further the goals of the 1996 Act, and made some suggested modifications.⁵ Workshops to consider the draft rules for designations and certifications have been scheduled in May and June.

As it noted more than eight months ago, Hargray agrees that it is critical to have a set of competitively neutral ETC criteria applicable to all ETCs and ETC applicants. However, competitive neutrality also demands that petitions for ETC designation be processed without undue delay so that consumers in rural areas can experience the benefits of competition as intended by Congress. Recognizing this fact, several other states – including Alaska, Arizona, Iowa, Illinois, Kansas, Kentucky, Maine, Minnesota, Mississippi, New Mexico, North Dakota, Oregon, South Dakota, Vermont, Washington, West Virginia, and Wisconsin – have processed ETC petitions while new or modified designation and reporting requirements were still under

³ *ETC Report and Order*, 20 FCC at 6396, para. 58.

⁴ See Comments of Hargray Wireless, LLC (filed Aug. 1, 2006) at pp. 2-3.

⁵ See Comments of Hargray Wireless, LLC (filed Feb. 21, 2007) at p. 2.

consideration. Indeed, the FCC made several competitive ETC designations between November 8, 2002, when it opened its proceeding to consider new ETC rules,⁶ and March 17, 2005, when new rules were adopted in its *ETC Report and Order*.⁷

Because the FCC and numerous states did not wait until new rules were adopted before processing ETC petitions, Hargray submits there is no reason to hold up such petitions in South Carolina. South Carolina is now among only eight states that have not yet designated any competitive ETCs. Nearly all of the other states with no competitive ETCs are without significant high-cost areas, meaning that South Carolina is virtually alone in having substantial rural areas but no USF funding to bring modern, competitive telecommunications services to rural consumers. Hargray's own Application has been pending since July 2003. It submitted an amendment in July 2006 to demonstrate compliance with the FCC's guidelines and asked the Commission to apply those guidelines. There is simply no policy justification for further delaying critical high-cost support to bring improved service to rural areas in South Carolina.

Rather than subject ETC applicants and rural consumers to further delay, Hargray submits that the Commission should proceed with its proposal to evaluate ETC applications expeditiously by following the FCC's permissive guidelines from the *ETC Report and Order*. Hargray has encouraged this Commission to adopt this approach in amending its Application to set forth its commitment and capability to meet the FCC's guidelines. In the absence of final

⁶ *Federal-State Joint Board on Universal Service, Order*, 17 FCC Rcd 22642 (2002).

⁷ See, e.g., *Public Service Cellular*, 20 FCC Rcd 6854, 6859 (rel. Jan. 31, 2005) ("*Public Service Cellular*"); *Sprint Corp.*, 19 FCC Rcd 22663, 22667 (2004) ("*Sprint ETC Order*"); *Advantage Cellular Systems, Inc.*, 19 FCC Rcd 20985, 20992-93 (2004) ("*Advantage Tennessee Order*"); *Highland Cellular, Inc.*, 19 FCC Rcd 6422, 6432-33 (2004) ("*Highland Cellular*"); *Virginia Cellular, LLC*, 19 FCC Rcd 1563, 1575-76 (2004) ("*Virginia Cellular*").

rules adopted by this Commission, carriers should be designated as ETCs if they can meet the FCC's guidelines. Once this rulemaking is complete, any new rules will apply to all ETCs, including those designated under the criteria articulated in the FCC's guidelines.

Hargray also notes that by affording parties an opportunity to comment on the proposed use of the FCC's guidelines on an interim basis, the Commission has taken appropriate steps to ensure that the use of those guidelines will comply with the Administrative Procedure Act and other applicable administrative law provisions.

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III. CONCLUSION

Hargray urges the Commission to apply the FCC's ETC guidelines on an interim basis pending adoption of its own rules, as discussed herein.

Respectfully submitted,


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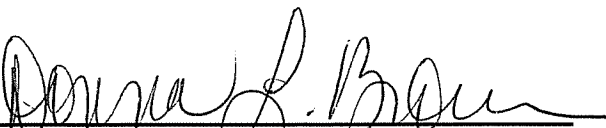
CERTIFICATE OF SERVICE

I, Donna L. Brown, hereby certify that on this 18th day of April 2007, copies of the foregoing **BRIEF OF HARGRAY WIRELESS, LLC** was placed in the United States mail, via first class, postage prepaid to:

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